



S T A T E B A R O F M I C H I G A N

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August 1, 2005

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2083

RE: ADM File No. 2004-56
Proposed Amendment of Rule 3.925 of the Michigan Court Rules

Dear Clerk Davis:

At its July 29, 2005 meeting, the Board of Commissioners of the State Bar of Michigan considered the above proposed amendment published for comment. After careful consideration, the Board adopted a position of opposition to the proposal and concurred with the explanation provided by the Standing Committee on Justice Initiatives as to which records should be destroyed and the committee's recommendation that a juvenile record destruction policy should be consistent with that of adult records (please see the enclosed public policy report). Also enclosed, please find public policy reports from the Civil Procedure and Courts Committee and the Criminal Jurisprudence and Practice Committee consistent with the position adopted by the Board; note, however, that the commentary expressed by these Committees does not necessarily reflect the views of the State Bar.

We appreciate the opportunity to offer this position for the Court's consideration. Please contact me with any further questions.

Sincerely,

John T. Berry
Executive Director

cc: Lynn Richardson, Administrative Counsel, Michigan Supreme Court
Nancy J. Diehl, President
Janet Welch, General Counsel



Report on Public Policy Position

Name of Committee:

Standing Committee on Justice Initiatives

Contact Person:

Judge Cynthia D. Stephens, Candace Crowley

Email:

judgecyn@yahoo.com, ccrowley@mail.michbar.org

Court Rule Number

ADM File No. 2004-56 - Proposed Amendment of Rule 3.925 of the Michigan Court Rules

The April 5, 2005, proposed amendment of MCR 3.925(E)(2)(c) would require that records and files of all juvenile offenses be destroyed when the person becomes 30 years old, instead of the current language, which requires that the records and files of certain adjudicated juvenile offenses be retained permanently.

Date position was finalized:

June 23, 2005

Process used to take ideological position:

Telephone discussion and vote

Number of members in the decision-making body:

Sixteen

Number who voted in favor and opposed to the position:

Favor: Ten

Opposed: None

Position:

Recommend a position of opposition

The text of the court rule that is the subject of this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-56.pdf>

Arguments for the position:

The court records to be destroyed are public records that should be maintained in the same manner as all other court files. These records may be needed for expungement purposes and there are other times when the prosecution or defense would need access to the records. The records can also be useful in civil litigation. The committee members could see no reason why the court file records should be destroyed.

The separate social files that are included with juvenile records should be destroyed in accordance with the proposed rule.

Arguments against the position (if any):

None identified

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the State Bar of Michigan adopted a position to oppose the proposal.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None identified



Report on Public Policy Position

Name of Committee:

Civil Procedure and Courts Committee

Contact Person:

Ronald S. Longhofer

Email:

rlonghofer@srr.com

Proposed Court Rule or Administrative Order Number:

ADM File No. 2004-56 - Proposed Amendment of Rule 3.925 of the Michigan Court Rules

The April 5, 2005, proposed amendment of MCR 3.925(E)(2)(c) would require that records and files of all juvenile offenses be destroyed when the person becomes 30 years old, instead of the current language, which requires that the records and files of certain adjudicated juvenile offenses be retained permanently.

Date position was adopted:

6-18-05

Process used to take the ideological position:

Discussion and vote

Number of members in the decision-making body:

13 present

Number who voted in favor and opposed to the position:

11-0, with two abstentions

Position:

The committee voted to oppose the amendment.

Rationale: The committee believes that the information regarding adjudicated offenses described in MCL 712A.18e(2) may be of assistance in adjudications of future criminal conduct, and in sentencing based on resulting convictions. Given modern electronic storage media, the volume of records should not be an issue.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-56.pdf>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

Not provided.

Arguments against the position (if any):

Not provided.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the State Bar of Michigan adopted a position to oppose the proposal.

Fiscal implications of the recommended policy to the State Bar of Michigan:

Not provided.



Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice Committee

Contact Person:

Valerie Newman; Marty Krohner

Email:

valerie@sado.org; marty@mich.com

Proposed Court Rule or Administrative Order Number:

ADM File No. 2004-56 - Proposed Amendment of Rule 3.925 of the Michigan Court Rules

The April 5, 2005, proposed amendment of MCR 3.925(E)(2)(c) would require that records and files of all juvenile offenses be destroyed when the person becomes 30 years old, instead of the current language, which requires that the records and files of certain adjudicated juvenile offenses be retained permanently.

Date position was adopted:

5/12/05

Process used to take the ideological position:

Committee meeting

Number of members in the decision-making body:

12

Number who voted in favor and opposed to the position:

12 in favor of position

Position:

The court rule is unclear as to what records would be destroyed. If the records to be destroyed are court files then the committee is opposed to the destruction of such records. The committee has taken the position that such records should be maintained in the same manner as all other court records. The court records are necessary for expungement proceedings and are sometimes needed if later litigation occurs. Further, the records are sometimes necessary for civil litigation.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-56.pdf>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

See above position statement.

Arguments against the position (if any):

Not provided.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On July 29, 2005, the State Bar of Michigan adopted a position to oppose the proposal.

Fiscal implications of the recommended policy to the State Bar of Michigan:

Not provided.